IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 497 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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FATMABEN I SAIYED

Versus

DIST PANCHAYAT

Appearance:

MR PV HATHI for Petitioner No. 1-2

MR PM RAVAL for Respondent No. 1-2

MS SEJAL K MANDAVIA for Respondent No. 1

Mr.Joshi, Assistant GOVERNMENT PLEADER,

for Respondent No. 3-4

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 10/07/2001

ORAL JUDGEMENT

1. Mr.Hathi for the petitioners states that so far as petitioner No.2 is concerned, her services are already regularized by the Department and, therefore, he is not pressing this petition so far as petitioner No.2 is

concerned. Therefore, this matter is required to be treated as relating to petitioner No.1 Fatmaben I. Saiyed.

2. The petitioner was appointed as an Assistant Instructress (Tailoring) in the year 1976. At the relevant time, she was appointed by way of selection through the District Panchayat Committee. Her name was also sent by the Employment Exchange for appointment in the post in question. The petitioner has passed VIth standard and also passed one year Certificate Course in the Trade of Tailoring (T.N.C. Course). As per the averment made in paragraph 3 of the petition, she was interviewed by the Selection Committee of the District Panchayat, headed by the President of the District Panchayat and assisted by other members of the Panchayat. Ultimately, the petitioner was selected for the aforesaid appointment and was appointed as back as in 1976 in the aforesaid post. The appointment order is produced at page 14, which is dated 13.9.1976 and therafter, the services of the petitioner were continued from time to time.

3. It is no doubt true that as per the conditions attached with the order, the petitioner was required to get herself selected through Panchayat Service Selection Board and her appointment was purely temporary. However, it is not in dispute that her services were continued all throughout and upto the year 1989, no action was taken for terminating her services on the ground that she has not got herself cleared through the Panchayat Service Selection Board. As per the provisions in the Act and the Rules, the appointment was required to be approved by the Panchayat Service Selection Board, which is a State level authority. However, it seems that neither the petitioner made any effort to get herself cleared through the Board nor even the Department sent her for such examination and till she filed the petition in the year 1989, she was continued in the service. Thereafter, in the year 1989, since she was apprehending termination of her services on the aforesaid ground of not getting herself cleared through the Panchayat Service Selection Board, she filed the present Special Civil Application and this Court, while admitting the matter, has also granted interim relief. Accordingly, all throughout, she has continued in service till today.

4. At the time of hearing of this petition, Mr.Hathi for the petitioner argued that the petitioner was never asked by the Department to appear before the Panchayat Service Selection Board and, all throughout, she has

served honestly and sincerely, without any complaint worth the name. Mr.Hathi submitted that, by this time, she has completed about more than 25 years' service and she has got expertise in tailoring work. He submitted that, in identical type of cases, wherein the candidate has not got himself / herself selected through the Panchayat Service Selection Board, this Court allowed such employee to continue in service.

He has placed reliance on two orders of this Court. One of such orders is passed in Special Civil Application No.5663 of 1988, which was decided on 3.3.2000 (Coram : R.R. Tripathi, J.). It has been observed in paragraphs 5, 6, 7 and 8 as under :-

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> 5. Shri Dhotre has invited my attention to the judgment of the Honourable Supreme Court in The Navgarh Cooperative Central Bank Ltd. and another v. Narayan Rath and another, AIR 1977 SC 112, wherein the Apex Court while dealing with a similar question, has observed in para 4 of the judgment as under :-
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> "4. The writ petition filed by respondent No.1 could succeed, in our opinion, on the narrow ground that he had been permitted to function for over thirteen years as Secretary of the Bank and that his appointment as Secretary was decided upon in a meeting over which the Registrar of Cooperative Societies had himself presided. The writ petition in substance is directed not against any order passed by the Cooperative bank but against the order passed by the Registrar disapproving the appointment of respondent No.1 as Secretary of the Bank. It was not open to the Registrar, in our opinion, to set aside respondent No.1's appointment as a secretary after having acquiesced in it and after having, for all practical purposes, accepted the appointment as valid. It is undesirable that appointments should be invalidated

in this manner after a lapse of several years."

6. The facts of the case before the Honourable Supreme Court are almost identical to the facts of the present case in as much as in the present case services of the petitioner are sought to be terminated in the year 1988, i.e. after the petitioner having put in 12 years of service on the ground that GPSSB has not granted approval to the appointment of the petitioner while in the case before the Honourable Supreme Court, the services of the petitioner therein were sought to be terminated after 13 years on the ground that his appointment was not approved by the Registrar of Cooperative Societies. The Honourable Supreme Court categorically held that, "It is undesirable that appointments should be invalidated in this manner after a lapse of several years."

7. Shri Dhotre, learned advocate for the petitioner has also relied upon a judgment in Vipul S. Baxi and another v. State of Gujarat and others, 1988(1) GLH (UJ) 34, wherein the services of the petitioner, who had put in 5 to 6 years of service came to be terminated on the ground that their names were not called for from Employment Exchange and hence their appointment was irregular. This Court has held that :

"The policy of calling names from Employment Exchange is really good and must be followed. But that does not mean that persons who have been appointed before 5-6 years should be made victim of some irregularity committed by certain officer of respondents. It is not the case of respondents that the petitioners made some misrepresentation or were appointed by some officer to favour them. Petitioners should not be made to suffer on account of such mistake for which they are not responsible."

In the present case the order terminating services of the petitioner is not passed on the ground that the appointment of the petitioner was made irregularly. The only ground on which services of the petitioner are sought to be terminated is that the authority concerned did not obtain the approval of the GPSSB. For this non-obtaining the approval, the petitioner cannot be held responsible and cannot be punished for the same. It is not the case of the authorities that the authorities sought for approval of the GPSSB and the same was denied. On the contrary it is clearly stated in the order dated 19.8.1988, Annexure `B' to the petition, passed by the District Panchayat, Bharuch, that as was mentioned in condition Nos. 1 and 3A of your appointment order dated 10.11.1976, your appointment is subject to obtaining approval from GPSSB and that the petitioner was also required to pass through the process after making an application, as and when advertisement is published by the GPSSB. It is further mentioned in the said letter that as approval from GPSSB is not received and that the petitioner has not passed the examination, which was advertised by the GPSSB from time to time, the petitioner's appointment was illegal and thus the petitioner's services are terminated.

8. But then it is found from the original appointment order that Condition No.3A was not incorporated in the appointment order of the petitioner and it is not the case of the respondent authorities that they had asked the petitioner at any subsequent stage to pass the examination held by GPSSB. So this ground also is not a valid ground on which the petitioner's services can be terminated. Learned advocate for the petitioner Shri Dhotre has also invited my attention to the judgment of this Court in Special Civil Application No.7527 of 1988 between Pankaj Joshi and the same respondent, namely, District Panchayat, Bharuch, wherein also the services of the

> petitioner therein were sought to be terminated on the ground that no approval from the Government was obtained to the appointment of the petitioner in a post held by him. Though the petitioner continued to work for 13 years and therafter when is services were sought to be terminated on the ground of non-obtaining of approval from the Government, this Court held that action of the respondents is illegal and the petition was allowed declaring that the petitioner's services are not liable to be terminated.
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> ... ..."

In the instant case, it is no doubt true that there is already a condition in the appointment order that the petitioner will have to get her appointment regularized through the Panchayat Service Selection Board and she was required to make an application for the same. However, it is the case of the petitioner that the petitioner was never informed regarding selection process undertaken by the Panchayat Service Selection Board. It is her say that she was serving in a remote area and, therefore, even if there was a public advertisement, it escaped her notice.

5. Mr.Hathi has also placed reliance on the decision in Special Civil Application No.527 of 1989, which was decided on 22.9.2000 (Coram : R.K. Abichandani, J.) and this Court has observed as under :-

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> When this matter is called out for hearing, the learned Counsel for the petitioner as well as the learned Counsel appearing for the respondent No.1 District Panchayat submit that the points involved in this petition are covered by a decision of this Court in Special Civil Application No.7527/88 decided by Hon'ble Mr.Justice S.K. Keshote, on 26.10.1999. It is submitted that the appointment which has been upheld in that mater was similar to the appointment of the petitioner made by the same Panchayat. It is submitted by the learned counsel for the respondents that the decision in Special Civil Application No.7527 of 1988 has not been challenged and

> that similar orders may be made even in this petition. It is accordingly declared that the petitioners services are not liable to be terminated on the ground of non-approval of his appointment as Assistant Instructor (Wireman) in the lower pay-scale. Rule is made absolute accordingly with no order as to costs.
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> ... ..."

It is the say of Mr.Hathi that the case of the petitioner is also similar as she is allowed to continue for more than 12 years upto 1989 when she filed this petition and by this time, she has put in about 25 years of continuous service. He, therefore, prayed that under the facts and circumstances of the case, the Department should be directed to regularize the services of the petitioner.

6. Mr.Joshi, learned AGP, as well as Ms.Mandavia, appearing for the District Panchayat, however, strongly contended that since the petitioner was not regularly selected, she had no right to continue on the post in question. They further submitted that, in any case, the petitioner must get herself selected through the Panchayat Service Selection Board. It was also further argued by them that, in any case, the petitioner is also not holding requisite qualification as there is a requirement in the Recruitment Rules that the Assistant Instructress (Tailoring) should have passed at least VIIth Standard. As against that, the petitioner has passed only VIth Standard. However, considering the fact that in earlier cases, this Court has already taken the view and the District Panchayat itself has accepted those orders by continuing the services of those petitioners, I do not find any justifiable reason to depart from the same especially when even the District Panchayat itself had not taken any action for a long period of 12 years, i.e. upto 1989, and at that stage, when the petitioner apprehended termination of her service, she approached this Court and she was protected by an interim order and by this time, she has already worked for 25 years continuously. Under these circumstances, it is a fit case in which the Department should consider the case of the petitioner for regularization. It is not open for the respondent to terminate her services on the ground that her appointment is not approved by the Panchayat Service Selection Board.

7. Considering the totality of the facts and circumstances of the case, the respondents are directed to regularize the appointment of the petitioner and should not terminate her services on the aforesaid ground of not getting herself selected through the Panchayat Service Selection Board. However, it is clarified that considering equity and long span of time, which the petitioner has put in, in her employment, the aforesaid order is passed. This order, therefore, may not be treated as a precedent in any other future cases as the order is confined to the facts of the present case, especially when by this time, the petitioner has put in more than 25 years of service and even when the original action was taken, she had put in more than 12 years of service at the relevant time. Therefore, considering the facts and circumstances of the case, the respondents are directed not to terminate her services and to allow her to serve on the post of Assistant Instructress (Tailoring) and for that purpose, her services can be treated to have been regularized.

Petition is accordingly allowed. Rule is made absolute with no order as to costs.

10th July, 2001 (P.B. Majmudar, J.)

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(apj)